

SENATE BILL NO. 64

INTRODUCED BY BRUEGGEMAN

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING CONTRACTOR REGISTRATION; REVISING REGISTRATION AND FEE PROVISIONS FOR CONSTRUCTION CONTRACTORS; SPECIFYING DISPOSITION OF CONSTRUCTION CONTRACTOR AND INDEPENDENT CONTRACTOR REGISTRATION FEES; AMENDING SECTIONS 39-9-201, 39-9-206, 39-71-201, AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-9-201, MCA, is amended to read:

"39-9-201. Registration required -- application. (1) Each construction contractor shall register with the department.

(2) An applicant for registration as a construction contractor shall submit an application ~~under oath~~ on a form to be provided by the department that must include the following information:

- (a) the applicant's social security number;
- (b) proof of compliance with workers' compensation laws;
- (c) the I.R.S. employer identification number, if any; and
- (d) the name and address of:
 - (i) each partner if the applicant is a firm or partnership;
 - (ii) the owner if the applicant is an individual proprietorship;
 - (iii) the corporate officers and registered agent if the applicant is a corporation; or
 - (iv) the manager of a manager-managed limited liability company or the members of a member-managed limited liability company and the registered agent if the applicant is a limited liability company."

Section 2. Section 39-9-206, MCA, is amended to read:

"39-9-206. Fees -- education program. (1) The department shall charge fees for:

1 (a) issuance, renewal, and reinstatement of certificates of registration; and

2 (b) ~~changes~~ change of name, address, or business structure.

3 (2) The department shall set the fees by administrative rule. The fees ~~shall~~ must cover the full cost of
4 issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs include
5 reproduction, travel, per diem, and administrative and legal support costs.

6 (3) The fees charged in subsection (1)(a) may not exceed:

7 (a) \$70 for the initial registration certificate; or

8 (b) \$70 for the renewal or reinstatement of a registration certificate.

9 (4) The fees collected under this section must be deposited in the state special revenue fund in an
10 account to the credit of the department for the administration and enforcement of this chapter and the
11 independent contractor program referred to in 39-71-401(3) CERTIFICATION PROVIDED FOR IN TITLE 39, CHAPTER
12 71, PART 4.

13 (5) The department shall establish, cooperatively with representatives of the building industry, an
14 industry and consumer information program, funded with 15% of the fees, to educate the building industry about
15 the registration program and to educate the public regarding the hiring of building construction contractors.

16 (6) The fee for a joint application for a certificate of registration and an independent contractor
17 exemption certificate may not exceed the total fee charged for a certificate of registration and an independent
18 contractor exemption certificate that are obtained separately. The fee paid for the independent contractor
19 exemption certificate may be used by the department to offset the cost of administering the independent
20 contractor program referred to in 39-71-401(3) CERTIFICATION PROVIDED FOR IN TITLE 39, CHAPTER 71, PART 4."

21
22 **Section 3.** Section 39-71-201, MCA, is amended to read:

23 **"39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out
24 of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation and
25 Occupational Disease Acts and the statutory occupational safety acts the department is required to administer,
26 with the exception of ~~the program for CERTIFICATION OF independent contractors referred to 39-71-401(3)~~
27 PROVIDED FOR IN TITLE 39, CHAPTER 71, PART 4, the subsequent injury fund, as provided for in 39-71-907, and the
28 uninsured employers' fund; are to be paid upon lawful appropriation provided for in 39-71-503. The department
29 shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

30 (a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308,

39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment of 3% of paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act of Montana without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay a proportionate share of all costs of administering and regulating the Workers' Compensation Act and the Occupational Disease Act of Montana and the statutory occupational safety acts that the department is required to administer, with the exception of the ~~program for~~ CERTIFICATION OF independent contractors referred to in 39-71-401(3) PROVIDED FOR IN TITLE 39, CHAPTER 71, PART 4, the subsequent injury fund, ~~as~~ provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer or \$500, whichever is greater. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment is equal to 3% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge is equal to 3% of the paid losses paid in the

preceding calendar year by or on behalf of all plan No. 2 insurers and 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30, 2001, and on or of each succeeding April 30 year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the 3% of paid losses paid in the preceding year. Any amount collected in excess of the 3% must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the 3% must be added to the amount to be collected as a premium surcharge in the following year.

(8) On or before April 30, 2001, and on or of each succeeding April 30 year, upon a determination by the department, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment equal to 3% of paid losses paid in the preceding calendar year, subject to a minimum assessment of \$500, that is due on July 1.

(9) An employer that makes a first-time application for permission to enroll under compensation plan

No. 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.

(12) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act and the Occupational Disease Act of Montana. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

Section 4. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116;
- (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors, working members of a partnership, working members of a limited

1 liability partnership, or working members of a member-managed limited liability company, except as provided
2 in subsection (3);

3 (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and
4 without a guarantee of minimum earnings;

5 (f) employment as a direct seller as defined by 26 U.S.C. 3508;

6 (g) employment for which a rule of liability for injury, occupational disease, or death is provided under
7 the laws of the United States;

8 (h) employment of a person performing services in return for aid or sustenance only, except
9 employment of a volunteer under 67-2-105;

10 (i) employment with a railroad engaged in interstate commerce, except that railroad construction work
11 is included in and subject to the provisions of this chapter;

12 (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

13 (k) employment of a person performing services as a newspaper carrier or freelance correspondent if
14 the person performing the services or a parent or guardian of the person performing the services in the case of
15 a minor has acknowledged in writing that the person performing the services and the services are not covered.
16 As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for
17 publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

18 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles;
19 but

20 (ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries
21 or delivers papers.

22 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

23 (m) a person who is employed by an enrolled tribal member or an association, business, corporation,
24 or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is
25 conducted solely within the exterior boundaries of an Indian reservation;

26 (n) employment of a jockey who is performing under a license issued by the board of horseracing from
27 the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out
28 after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
29 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

30 (o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing

1 services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

2 (p) employment of an employer's spouse for whom an exemption based on marital status may be
3 claimed by the employer under 26 U.S.C. 7703;

4 (q) a person who performs services as a petroleum land professional. As used in this subsection, a
5 "petroleum land professional" is a person who:

6 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating
7 a business agreement for the exploration or development of minerals;

8 (ii) is paid for services that are directly related to the completion of a contracted specific task rather than
9 on an hourly wage basis; and

10 (iii) performs all services as an independent contractor pursuant to a written contract.

11 (r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability
12 company who qualifies under one or more of the following provisions:

13 (i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the
14 limited liability company and does not receive any pay from the corporation or the limited liability company for
15 performance of the duties;

16 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
17 limited liability company;

18 (iii) the officer or manager either:

19 (A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the
20 limited liability company; or

21 (B) owns less than 20% of the number of shares of stock in the corporation or limited liability company
22 if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in
23 subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company;
24 or

25 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
26 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of
27 subsection (2)(r)(iii)(A) or (2)(r)(iii)(B).

28 (s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

29 (t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
30 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

1 (u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care
2 for individuals who, because of age or infirmity, are unable to care for themselves when the person providing
3 the service is employed directly by a family member or an individual who is a legal guardian;

4 (v) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10).

5 (3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability
6 partnership, or a working member of a member-managed limited liability company who represents to the public
7 that the person is an independent contractor shall elect to be bound personally and individually by the provisions
8 of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers'
9 Compensation Act.

10 ~~_____ (b) The application must be made in accordance with the rules adopted by the department. There is a~~
11 ~~\$17 fee for the initial application. Any subsequent application renewal must be accompanied by a \$17 application~~
12 ~~fee. The application fee and renewal fee must be deposited in the administration fund established in 39-71-204~~
13 ~~state special revenue account established in 39-9-206 to offset the costs of administering the program.~~

14 (B) APPLICATION FEES OR RENEWAL FEES FOR INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATES MUST BE
15 DEPOSITED IN THE STATE SPECIAL REVENUE ACCOUNT ESTABLISHED IN 39-9-206 AND MUST BE USED TO OFFSET THE
16 CERTIFICATION ADMINISTRATION COSTS.

17 (c) When an application is approved by the department, it is conclusive as to the status of an
18 independent contractor and precludes the applicant from obtaining benefits under this chapter.

19 (d) The exemption, if approved, remains in effect for 2 years following the date of the department's
20 approval. To maintain the independent contractor status, an independent contractor shall submit a renewal
21 application every 2 years. The renewal application and the \$17 renewal application fee must be received by the
22 department at least 30 days before the anniversary date of the previously approved exemption.

23 (e) A person who makes a false statement or misrepresentation concerning that person's status as an
24 exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty
25 for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The
26 lien provisions of 39-71-506 apply to the penalty imposed by this section.

27 (f) If the department denies the application for exemption, the applicant may, after mediation pursuant
28 to department rules, contest the denial by petitioning the workers' compensation court.

29 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
30 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private

1 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or
2 managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

3 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering
4 the notice to the board of directors of the corporation or to the management organization of the
5 manager-managed limited liability company; or

6 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
7 delivering the notice to the board of directors of the corporation or to the management organization of the
8 manager-managed limited liability company and to the insurer.

9 (b) If the employer changes plans or insurers, the employer's previous election is not effective and the
10 employer shall again serve notice to its insurer and to its board of directors or the management organization of
11 the manager-managed limited liability company if the employer elects to be bound.

12 (5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership,
13 a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the
14 purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner,
15 member, or manager to exemption from coverage.

16 (6) Each employer shall post a sign in the workplace at the locations where notices to employees are
17 normally posted, informing employees about the employer's current provision of workers' compensation
18 insurance. A workplace is any location where an employee performs any work-related act in the course of
19 employment, regardless of whether the location is temporary or permanent, and includes the place of business
20 or property of a third person while the employer has access to or control over the place of business or property
21 for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided
22 by the department, distributed through insurers or directly by the department, and posted by employers in
23 accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign
24 as provided in this subsection is subject to a \$50 fine for each citation."

25
26 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

27 - END -